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ALEXANDER L. STEVAS,
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No. 83-521

In The

Supreme Court of the United States

October Term, 1983

PLAZA DE LAS ARMAS, INC., et al.,

Petitioners,

vs.

CITY OF SAN ANTONIO, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Does the refusal of the courts below to examine an alleged municipal policy of segregation and discrimination in its urban renewal land disposition program, and a systematic avoidance of, disregard for and noncompliance with, federal statutes and regulations prohibiting such discrimination, operate to frustrate the national policy of urban redevelopment and to further deplete the economic resources of our urban areas?

2. Did the Court of Appeals for the Fifth Circuit err in depriving petitioners of an opportunity to present at trial evidence of a type which this Court has specifically approved as being probative of intent, despite the clear offer of the petitioners of such evidence?

3. Did the Court of Appeals for the Fifth Circuit err in denying the petitioners a trial on the merits, based upon its conclusions that petitioners' claim of denial of procedural due process and inverse condemnation were not "serious"?

4. Is evidence appearing of record that respondents treated petitioner Viramontes differently than one or more anglos in the same or similar situation sufficient in and of itself to raise the issue of the intent with which such treatment was accorded?

5. Assuming the intent to be resolved in favor of the petitioner Viramontes, does the doctrine of "transferred intent" then operate to create a cause of action in petitioner Rincon?

LIST OF PARTIES

1. LOUIS VIRAMONTES; Petitioner
2. PLAZA DE LAS ARMAS, INC.; Petitioner, which is a corporation owned 50% by Petitioner Louis Viramontes and 50% by Mr. LOUIS ROSENBERG
3. JOE RINCON; Petitioner
4. THE CITY OF SAN ANTONIO; Respondent
5. LILA M. COCKRELL, former mayor of the City of San Antonio; Respondent
6. HENRY CISNEROS, former councilmember and present mayor of the City of San Antonio; Respondent
7. FRANK D. WING, councilmember of the City of San Antonio; Respondent
8. JOE ALDRETE, JR., councilmember of the City of San Antonio; Respondent
9. HELEN DUTMER, councilmember of the City of San Antonio; Respondent
10. BERNARDO EURESTE, councilmember of the City of San Antonio; Respondent
11. JOE WEBB, councilmember of the City of San Antonio; Respondent
12. BOB THOMPSON, councilmember of the City of San Antonio; Respondent
13. GENE CANAVAN, former councilmember of the City of San Antonio; Respondent
14. VAN HENRY ARCHER, JR., councilmember of the City of San Antonio, Respondent
15. JOHN STEEN, former councilmember of the City of San Antonio; Respondent
16. THOMAS E. HUEBNER, former city manager of the City of San Antonio; Respondent

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RESPONDENTS' BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT
OF THE UNITED STATES:

The Respondents respectfully submit this their Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

CITATION TO OPINIONS BELOW

Petitioners accurately state the status of the opinions below in their Petition for Writ of Certiorari.

JURISDICTION

Petitioners accurately state their allegations of jurisdiction in their Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The Petitioner's Statement of the Case contains material omissions and inaccuracies. This writer will ignore all of those which do not appear relevant here.

This is the remaining action of a number which arose from the unsuccessful business venture of Mr. Louis Viramontes and Mr. Louis Rosenberg, each 50% owner of Plaza De Las Armas, Inc. to rebuild and lease four old structures known as the Plaza De Las Armas Building.

Early in 1976 Mr. Viramontes, the petitioner herein, and Mr. Rosenberg completed a successful bid for four parcels of land in the Rosa Verde Project, Tex. R-78, urban renewal area. The four parcels were awarded by the Urban Renewal Agency of the City of San Antonio, an independent governmental entity of the State of Texas, capable of suing and being sued.

Subsequently, in the same year, Viramontes obtained loans totaling $100,000 from that agency; $200,000 from H. U. D. (2nd Supp. R. 976); and $230,000 from the National Bank of Commerce. In May 1978, a new note in the amount of $800,000 was executed by the bank and petitioner, and guaranteed by Mr. Ted Troutman, for whom Mr. Charles Deitiker, a CPA, was trustee (2nd Supp. R. pp. 1026, 1035).

The Petitioner, Viramontes, an architect and developer, employed the architectural firm of Lance, Larcade & Bechtol to assist him in the project. Charles Deitiker was comptroller for the project.

Progress on the project was slow, but in 1977, the City of San Antonio, a Respondent herein, leased a small portion of the structure for office space. Subsequently, in 1978 the City of San Antonio agreed to lease substantially all of the building, and this kept the project viable.

However, more delays plagued construction, and in February 1979, the bank informed Mr. Troutman that it would look to his guaranty (2nd Supp. R. p. 913). Thereafter Troutman negotiated with petitioner Viramontes and Rosenberg; Rosenberg executed an agreement giving Troutman control of the entire project (2nd Supp. R. 927-931). As noted in that agreement, Troutman was obligated to meet all tenant requirements and to obtain the necessary government permits and certificates (2nd Supp. R. pp. 930, 931). Rosenberg agreed to negotiate if any of the architectural layouts yet to be proposed to the City presented problems concerning City acceptance (2nd Supp. R. 931).

It should be noted that by this time Rosenberg and petitioner and their corporation was in default on its loan to the bank (Deposition of Louis Rosenberg, Vol. III, pp. 120-121). Rosenberg informed the petitioner of his plan to have Troutman complete the project on February 3, 1979, almost a month after they had gone into default (Deposition of Rosenberg, Vol. III, pp. 148-151). In April, 1979 Troutman and Deitiker received a deed of trust on the property in violation of loan commitments and permanent financing agreements. The deed of trust was subsequently filed (Deposition of Rosenberg, Vol. III, pp. 163-165).

In May of 1979, the agreements between Rosenberg and the petitioner Viramontes on one side and Dietiker and Troutman on the other side fell apart, and Troutman left the project over allegations that he had mismanaged it (2nd Supp. R. p. 91). On August 2, 1979, Deitiker filed his mechanic's lien against the building in the amount of $242,236.85 (2nd Supp. R. pp. 894-897, 932).

After the termination of the agreements, Rosenberg and Viramontes went back to the project, but on May 29, 1979, the National Bank of Commerce posted its first notice of foreclosure, which was apparently set aside by preliminary injunction. Some negotiations with the bank continued concerning the now long overdue note. It was only after the posting of the foreclosure notice and the dismissal of Troutman and Dietiker from the project that many basic approvals from the state and from the City of San Antonio were initially requested for the work.

It should be noted, however, that petitioner, Viramontes, claimed he had sought approval prior to August

1979 from the state regarding handicapped access requirements, but that the file had been lost by the state agency (Deposition of Louis Viramontes of March 3, 1981, pp. 47-51, Exhibits 2, 3). While these last-minute attempts were being made to comply with the state and city codes, Viramontes and Rosenberg tried to find new backers or buyers for the building and to stop the bank from foreclosure. Viramontes obtained $100,000 from Mr. Frank Sepulveda to "hold off" the bank for a few weeks (Deposition of Viramontes of March 3, 1981, p. 13).

Viramontes then attempted to buy out Rosenberg for a small amount. Rosenberg had found a buyer for the building, but each partner turned down the other's proposal. Further, the fact of unknown obligations and mechanics' liens hampered any chance to close into permanent financing (Deposition of Rosenberg, Vol. III, pp. 52-55). This serious bookkeeping problem led to a subsequent suit against Deitiker, the comptroller of the project.

Despite the payment of the $100,000 in August, the bank foreclosed on the building, on September 4, 1979 (2nd Supp. R. 782-785). At the trustee's sale Mr. Frank Sepulveda outbid Louis Rosenberg and purchased the property, effectively cutting off liens (2nd Supp. R. pp. 788-789).

As noted above, Rosenberg bid against Sepulveda at the trustee's sale, which led to an excess over and above the bank note, which excess sum was subsequently interpled by the bank. Later, the City of San Antonio interpled rentals for which there were multiple claimants (2nd Supp. R. p. 694).

When H. U. D. brought suit to collect on its note, it obtained an order removing all causes of action involving the project to the United States District Court. Eventually all of the actions and cross-actions were consolidated. All claims except those claims of Viramontes and Mr. Joe Rincon against the Respondents were settled by agreement of the parties, and a stipulation was filed, resulting in a dismissal with prejudice. The Urban Renewal Agency of the City of San Antonio was dismissed with prejudice at this juncture by Petitioners (2nd Supp. R. 1179, 1186, 1195). Mr. Rincon was a contractor of Viramontes and later of Troutman on the project (2nd Supp. R. pp. 843-846), and made a partial recovery in the settlement on his claim for labor and materials against the property.

Frank Sepulveda, a Mexican-American developer, as acknowledged by Petitioner Viramontes in deposition, subsequently finished the building. It was Mr. Sepulveda who moved to cut off all mechanics' liens on the building.

Finally, the assertion of Petitioners that Respondents have never controverted the allegation that their actions were motivated by discrimination against Mexican-Americans as a class is a calumny against not only the mayor, Henry Cisneros, and councilmembers Joe Alderete, Jr., Joe Webb, Frank Wing, and Bernardo Eureste (who are members of racial minority groups); but also against former mayor Lila M. Cockrell and councilmembers Helen Dutmer, Bob Thompson and Van Henry Archer; and former councilmembers Gene Canavan and John Steen and former city manager Thomas E. Huebner. Beginning with their Original Answer and throughout the pro-

ceedings, as reflected in the record, the Respondents have disputed the allegation of discrimination and have shown how utterly meritless that conclusory allegation is.

SUMMARY OF ARGUMENT

1. The Respondents were correctly granted summary judgment in this cause.
2. The decision of the Fifth Circuit Court of Appeals does not conflict with the ruling in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 492 U. S. 252, 50 L. Ed. 2d 450, 97 S. Ct. 555 (1977).

ARGUMENT

Summary Judgment Correctly Granted

It is the burden of the one moving for a summary judgment to show the absence of a genuine issue as to any material fact. *Adickes v. Kress & Co.*, 398 U. S. 144, 26 L. Ed. 2d 142, 95 S. Ct. 1598 (1970). In this cause Respondents have clearly carried this heavy burden.

The record in this cause clearly shows that Petitioner Louis Viramontes and other agents of Plaza De Las Armas, Inc. had not done the minimum work required by state and municipal codes in order to obtain the certificate of occupancy. This was established by the depositions of Viramontes and Louis Rosenberg, as well as by stipulation

at the hearing of May 10, 1982, wherein counsel for the Petitioners stipulated that her client Viramontes had not obtained the required state approval.

Further, the record establishes, by the deposition of Rosenberg, that while he was able to extend the availability of permanent financing on the building, he was unable to clear the title so that he could close into available financing.

Eventually Rosenberg bid for the building on the courthouse steps, which would have allowed him to take it free and clear of liens, but he was, as noted earlier, outbid by Frank Sepulveda. The winning bid, as Petitioner Viramontes noted by affidavit, was almost two hundred thousand dollars more than the remaining balance on the note foreclosed on by the bank.

No Conflicts

Petitioners contend that the decision of the Fifth Circuit Court of Appeals conflicts with this Court's decision in *Village of Arlington Heights v. Metropolitan Development Corporation*, 429 U.S. 252, 50 L. Ed. 2d 450, 97 S. Ct. 555 (1977). This contention, like so many others by Petitioners, is not borne out by the record. Both courts perused the record and found that the assertion of Petitioners that the Respondents caused their damages is pretextual, even though the attempts by Petitioners to allege racial discrimination reached quite imaginative levels in the district court (Appendix A).

That this commercial development became a disaster because of the actions of Petitioner Viramontes and Rosenberg is clear from the lengthy record in this cause. Few,

if any, business enterprises could survive the mismanagement evident in Petitioners' project.

CONCLUSION

Petitioner, Louis Viramontes, has lost his interest in property through a foreclosure to which the Respondents were not a party. The Respondents showed both the district court and the Fifth Circuit Court of Appeals that not only were the demands of Petitioner correctly refused, but also that the failure to obtain such was not material in the sequence of events which led to the foreclosure by the bank.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. SA 80 CA 445

PLAZA DE LAS ARMAS, INC., ET AL.,

Plaintiffs,

vs.

CITY OF SAN ANTONIO, ET AL.,

Defendants.

MOTION TO WITHDRAW FROM REPRESENTATION OF CERTAIN NAMED PLAINTIFFS

Now comes PATSY CHEYNEY, and prays the Court for permission to withdraw as attorney of record for ANDREW RODRIGUEZ, SALVADOR RAMOS, JACINTO J. PRECIADO, and JUAN GARCIA, and as grounds therefor would show the court as follows:

I.

All the named plaintiffs were members of the Carpenter's Union. Their names were referred to this attorney by Mr. Tino Guerra, another attorney, who gave as his reason for reference the fact that he was not licensed to practice in Federal court. Mr. Guerra at that time represented the Carpenter's Union. It has subsequently developed that the particular sums sworn upon in Plaintiff's Original Petition were transferred and assigned by these plaintiffs to the Carpenters' Union, and that the Carpenters' Union is the true party in interest. Your attorney

was not aware of this assignment until long after the case was filed.

II.

Your attorney has had no personal contact with any of the named plaintiffs. She has been instructed to forward Defendants' interrogatories to the office of Mr. Guerra for answering, but the answers to such interrogatories have not been promptly forthcoming. This attorney does not have addresses or telephone numbers for the individual plaintiffs and has had no direct communication with them. It is entirely possible that they may have sustained damages other than the sums pled upon, but this attorney has no knowledge of such damages and the plaintiffs are not available to testify.

III.

Under the circumstances, this attorney is totally unable to adequately represent the named plaintiffs.

WHEREFORE, PREMISES CONSIDERED, this attorney prays that the Court allow her to withdraw as attorney of record for Plaintiffs SALVADOR RAMOS, ANDREW RODRIGUEZ, JACINTO J. PRECIADO, and JUAN GARCIA.

/s/ Patsy Cheyney,
Attorney for Plaintiffs

P. O. Box 12812
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I hereby certify that a true copy of the above and foregoing Motion to Withdraw from Representation of Certain Named Plaintiffs was served by hand-delivery at the office of Mr. Steven W. Arronge, Assistant City Attorney, and by depositing same in the U. S. mail addressed to Mr. Tino Guerra, Milam Building, San Antonio, Texas, 78205 on February 3, 1982.

/s/ Patsy Cheyney